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LIBERALISING THE EUROPEAN UNION GAS MARKET

Mw. L. Hancher and T. Boersma

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1 INTRODUCTION

This dossier addresses the topic of energy and gas policy. Given the enormous potential scope of this topic, choices have been made regarding the focus of this paper. It is argued that the impact of the liberalisation of the gas market on national suppliers and consumers deserves particular emphasis in this context. The European gas market has only recently been subject to far reaching liberalisation and is, as such, somewhat behind other sectors of the energy market, but in addition the Netherlands plays an important role in this market as it is one of the leading producers of gas in the EU. Furthermore the European Gas Directives have set in motion a process of liberalisation that has in fact been taken further in the Netherlands than required by the Directives. These aspects make this dynamic market the most interesting and relevant subject of study within the scope of this paper. Hence other related subjects (e.g. the creation of a common energy market or the liberalisation of the electricity market) are not dealt with in full within the scope of this paper.

The paper will focus on the following sets of issues, which have been categorised in two phases:

- The impact of gas liberalisation on consumer prices and consumer choice (so-called 'switching') – i.e. the short term 'results' of liberalisation ;
 - The issues surrounding privatisation (and 'ownership unbundling') of strategic network assets – i.e. the wider national political parameters relating to market structure
- First Phase*
- The issues surrounding national protectionism versus competition – i.e. the emerging European and national debate on the future organisation of Europe's gas (and energy) sector.
 - The issues surrounding security of supply, import dependency and resource depletion – perceived as long term possible results of liberalisation.
- Second Phase*

This dossier is politicised in several senses, which are to be explored in further detail. The different national political parties have taken different positions on liberalisation and

privatisation, which will be discussed in detail in the third chapter of this report. This politicisation however appears not to be directly related to subject matter of the European directives or their implementation, even though the latter measures have set the national debates in motion. At the same time, there is a separate 'Dutch' debate on the merits of privatisation / liberalisation, and the desired speed and direction of the privatisation process especially with regard to the sensitive issue of the ownership and operation of energy networks.

Most recently, this debate has focussed on the issue of 'ownership unbundling' of the regional networks – an issue which has attracted huge press and media coverage. There has also been a spill over from the energy market liberalisation debate into debates on bonuses for top executives of regional energy companies. This latter issue has also been politicised and press coverage has been extensive. However, *prima facie*, this seems to be primarily a Dutch issue and neither the European Union institutions nor European policy makers have been 'blamed' for the perceived downsides of energy market liberalisation, nor have these current issues been attributed to the impact of the Directives as such. That being said, it must be acknowledged that some of the proposed solutions to what are largely perceived as Dutch problems or issues – such as the choices to be made with regard to privatisation - must be accommodated into European law (the Treaty rules on free movement of capital and establishment as well the provisions of the internal gas market Directives). European law and policy are seen as a constraint on national options.

We can use this dossier to highlight a certain paradox which emerges from the interaction between process and content of the implementation of European policy. As we explain below the process of negotiation and eventual implementation of the First Gas Directive 98/30 followed the 'classic' pattern with extensive involvement of government officials, Ministers and industry, including gas producers, suppliers and large industrial users. The interests of the consumer, in so far as they were considered to be of any relevance, were assumed to be taken care of through the safeguards (or 'escape clauses') adopted to allow Member States to continue to use established instruments to secure various public interest objectives. With the adoption of the Second Gas Directive 2003/55 in 2003, the (gas) consumer became more than just a passive user (or, as the energy industry used to refer to its clients, 'a connection'), expanding the circle to include a wider range of consumers, although not necessarily the group of stakeholders. The consumer has been given various economic rights – to choose a supplier and to demand a certain quality of service – rights which are legally enforceable. This process has led to a nascent form of functional empowerment – the gas user is not merely a passive force who depends on a monopolistic supplier who is assumed to act in the public interest when it sets prices and terms and conditions of services. In particular, in

accordance with the Second Directive and the national legislation implementing that directive, the consumer of gas is now able to exert more control over his or her supplier. They have choices and can realise these choices. What remains unanswered however is whether consumers are actually brightened up by this functional empowerment. Is it safe to conclude that there is no readily identifiable problem regarding political legitimacy in respect of this dossier, or are we dealing with illusory public acceptance?

However the consumer may also become a 'citizen' – with 'political claims' in respect of some elements of this dossier. Consumer consultation has now become far more 'imbedded' in the Dutch energy policy process. Increased consumer pressure for fair prices and practices has to be responded to by the energy regulator and by government. A political response is required to meet consumers' concerns on rising gas bills. As such, it could be argued that as a result of the changes introduced by EU gas policy, the citizen / consumer enjoys more rights (or at least 'claims') – not just to choose supplier but to make a (limited) contribution to debates on energy policy and related environmental matters, and indeed the consumer has used certain rights to make views apparent to DTe (national regulator). This could be classified as a nascent form of political empowerment.

But the limitations to functional and political empowerment are evident – not because of EU policy as such as source of limitation on this process, but because the Second Phase issues such as security of supply are still primarily conducted in terms of the more classic diplomatic or international law model. The Energy Directives do not deal directly with this aspect – the Directives have only an indirect impact on Second Phase issues. An interesting question is whether the functional empowerment process could eventually challenge this classic diplomatic/ international law paradigm. Would, for example, Dutch citizens or Dutch political parties be prepared to allow, without full consultation, decisions on the expansion of domestic nuclear energy production to be transposed to the supra-national level?

As with all the dossiers related to 'Project Europe', this paper addresses three objectives (ex-post analysis, assessment of legitimacy problems and counterfactual). In order to reach these objectives this paper starts with an ex-post empirical analysis of the topic. The EU Gas Directives and the liberalisation of the market achieved so far are discussed in the third section. The key features of Dutch policy are outlined and furthermore the communicational activities carried out and the perception of Dutch society of these activities is examined. Problems of legitimacy that are encountered throughout the process will be discussed in the concluding chapter (7).

The United Kingdom was the first country to embrace full gas (and energy) market liberalisation and even though its own natural gas resources are due to run out in the next five to ten years, and the United Kingdom will become a major gas importer, the government has put security of supply at the top of the national political agenda in a different manner. In November 2005 Prime Minister Tony Blair initiated a debate on a concerted European approach to the security of supply issue. Since parallels can be recognised with the Dutch case (i.e. both countries have substantial gas resources) but also divergences (i.e. Dutch government has embraced a careful Gas depletion policy in order to protect its major reserves) the British case is examined in order to formulate a counterfactual.

In contrast to the United Kingdom and the Netherlands, regulations in France rest on different foundations. Whereas in the first two Member States the gas sector is increasingly shaped by market mechanisms, in France the market only fulfils a residual role, while the supply of gas is still primarily seen as a form of 'service publique' which is closely controlled through government regulation and intervention. Therefore the French case too will be examined in order to formulate a counterfactual.

2 EX-POST EMPIRICAL ANALYSIS

2.1 The basic objectives of gas market liberalisation

Market liberalisation entails the introduction of competition between suppliers by conferring the right on so-called eligible customers to choose a supplier instead of being dependent on locally or nationally established monopoly providers. In general the introduction of competition is expected to make companies more efficient and cost conscious as well as more service-oriented. Competitive pressures should result in lower prices as new suppliers enter the market or existing suppliers become more efficient and recharge lower costs. Accordingly, the European energy market liberalisation intends to allow all categories of consumers to profit optimally from the advantages of competition and free trade in gas. We would stress that the process of gas market liberalisation leading to a single or internal European gas market is a gradual, staged process towards “controlled competition”. In fact the introduction of market liberalisation has been accompanied by the adoption of a considerable body of legislation. This is in turn a reflection of the perceived need to adjust market structures to ensure that competition can develop, as well as an acknowledgement of the special characteristics of energy.

As the Dutch Ministry of Economic Affairs has stressed, increased competitive pressures on gas prices should result in lower real prices and greater choice but not at the expense of security of supply, environmental objectives or public service aspects (Ministry of Economic Affairs, 2006).

The creation of the internal gas market represents one of the final initiatives taken by the Commission to create a single European or true internal market originally by 1992, following the launch of its ‘Cost of Non-Europe’ initiative. Progress was however slow given the difficulties in persuading Member States to relinquish sovereign powers in this area. Major gas suppliers – also known as ‘incumbents’ – also resisted intrusion in their established markets and warned of the ills of excessive regulation (J Haalaand Matlary, 1977; S. Padgett, 1992). A first measure on gas transit was adopted in 1991, but this had only limited scope. Eventually energy began to lose its special status and became an obvious candidate in the drive to complete the European single market (J. Greenwood, in R. Pedler, 2000). The process of actual liberalisation of the gas market was set in motion with the adoption of the First (1998) and the subsequent Second (2003) Gas Directives. The former was a weak measure, and unusually for harmonising legislation, left an exceptionally large margin of discretion to Member States; in short the directive only laid down a foundation for an internal energy market that was yet to be created (B. Eberlein, in P. Cameron, 2005).

The Dutch government implemented the first European Directive 98/30 in national law with the adoption of the so-called Gas Act (2000). The Second Gas Directive was implemented in the Implementation and Intervention Act (the I & I Act) (2004). A third and probably final Directive is planned for adoption in 2007 – but only if this proves necessary to supplement existing measures. As of July 2007 all domestic gas consumers throughout Europe will be free to choose their suppliers (CIE stakeholder consultation, EC, 2005). In addition to the two Directives, a Gas Regulation was adopted in July 2005. This measure enters directly into force into the national legal orders and therefore does not require the adoption of implementing legislation. It does however affect the various regulatory rules which are supervised by the competition authority (DTe). Currently, domestic legislation is undergoing further revision and a new law, which will introduce full ownership unbundling of the regional energy companies' network assets is expected to be adopted later this year.

2.2 The Constitutional Treaty and energy policy

The debates on the inclusion of a new Article on energy provide valuable insights into national sensitivities on the role of the European institutions in shaping the many dimensions of energy policy. Despite the inclusion of a separate energy chapter in the new Constitution, this would probably not have resolved the many political and legal problems surrounding the Commission's competence to deal with energy matters. The wisdom of including a specific reference to energy policy issues in the European Constitutional Treaty has been a vexed issue for many decades. The current Treaty on the European Union, as amended by the Treaty of Maastricht merely mentions energy as one of the activities of the Community (Article 3(u) of the EC Treaty) in passing, and gives no further clue as to what role the European Commission, Council or Parliament should play in this crucial area. The issue of a separate energy title was acknowledged in Declaration 1 to the Treaty on European Union which provided that this issue would be given further consideration following a Commission Report which would be submitted to the Council by 1996 at the latest.¹ The absence of any specific provision on energy competence has not of course presented any serious obstacle to the adoption of a barrage of measures, particularly since 1996 at aimed liberalising energy markets, and more recently imposing regulations on tariffs and access to electricity and gas networks, harmonising emission trading schemes or creating a common framework to deal with security of supply issues in gas and electricity markets.

But as one of the major aims of the new Constitution was to ensure a clear division of competences between Europe and national governments, in the interests of greater transparency and democracy, it was hardly surprising that energy finally got the mention it deserved. In the draft constitution produced by the Convention under the guidance of Giscard d'Éstaing energy was listed in Article 1-13 (later re-numbered as Article 1-16) as an

'area of shared competence', along with the internal market, environment and consumer protection. How that competence was to be shared was further specified in Article III-152 (later re-numbered as III-157) - the new article dealing with energy. The actual text proved contentious, and it was argued by some, could have actually been interpreted as a step backwards and as a limitation upon the Commission's powers to propose new measures aimed at completing the energy market liberalisation process. Some Member States however feared that the text of the article would have posed a serious threat to continued national control over energy resources and supply policies.

The Irish government had originally proposed in mid-May to resolve the debate by simply deleting the offending text of what was then numbered as Article III-157 and removing any reference to energy as a shared competence in the then Article 1-16. This solution while having the virtue of simplicity would have created something of a legal void, with the only mention of energy being relegated to then Article III-130 on environmental policy. That draft article provided these measures which significantly affect a Member State's choice between different energy sources and the general structure of its energy supply could only be adopted by unanimous vote in Council.

2.2.1 The final Treaty text

Further discussion, and in particular pressure from the United Kingdom government who embarked on a 'red-lining approach', led to the re-insertion of the energy article on the eve of the Inter-Governmental Conference (IGC) summit, and some last minute tweaks to the final text adopted on June 18th. The final result is a clearer separation of powers. Energy was thus to be firmly enshrined as one of the eleven areas of shared competence.

The final text of the new energy title - Article III-256 - provided that:

"1. In establishing an internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:

- (a) Ensure the functioning of the energy market,
- (b) Ensure security of energy supply in the Union, and
- (c) Promote energy efficiency and saving and the development of new and renewable forms of energy".

2. The measures necessary to achieve the objectives in paragraph 1 shall be enacted in European laws or framework laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee. Such laws or framework laws shall not affect a Member State's choice between different energy sources and the general structure of its energy supply, without prejudice to Article III-234(2)(c)".

EU policy on energy would ensure the functioning of the energy market, ensure security of supply and promote energy efficiency and the development of renewable energy. In the majority of cases the relevant measures can be adopted by qualified majority - i.e at least 15 of the 25 members of the Council, and representing Member States comprising at least 65% of the population of the Union population. However the amended text provided that such laws must not affect a Member State's rights to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article III-234 on environmental policy. In other words, unanimity was required.

The final text was a carefully crafted compromise between national sovereignty over natural resources and energy taxation issues, and a shared Union competence for the rest. As a result, it is probable that the European institutions could not have adopted measures directing a Member State to produce sufficient volumes from its own energy resources for the benefit of the rest of the Union, even in the interests of European-wide security of energy supply. Nor could the Community institutions usurp the functions of national governments in the event of an energy crisis. This is further borne out by the wording of Declaration nr. 22 annexed to the Final Act to the Constitution Treaty, which stated that, "The Conference believes that Article III-256 does not affect the right of the Member States to take the necessary measures to ensure their energy supply under the conditions provided for in Article III-131". ²

2.3 Short description of the EU Gas Directives

Directive 98/30/EC, also known as the First Gas Directive, established common rules for the transmission, distribution, supply and storage of natural gas. It required Member States to abolish gas import monopolies, to allow limited negotiated third party access (TPA) to transmission networks, to be operated by transmission system operators (TSO), but did not address key issues vital to fostering competition, such as access to storage facilities. Although Member States were required to designate TSO's, these bodies did not have to be separated out or 'unbundled' from the firms supplying or producing gas – the only requirement was that integrated TSO's should produce separate (internal) accounts for their transmission activities. Finally the Directive required that access tariffs should be fair and non-discriminatory but it did not specify how this was to be achieved – in other words there was no provision for independent regulation. Only certain larger customers were delegated as 'eligible customers' who were entitled to switch supplier or import gas. Nevertheless as the Netherlands had opted for a more far-reaching liberalisation of the electricity market in implementing the Electricity Directive into the Electricity Law of 1998, it took a similar but

not identical approach to implementing the Gas Directive into national law. The gas sector was brought under the regulatory supervision of the DTe – albeit that the latter had significantly fewer powers in relation to the gas market.

The Second Gas Directive 2003/55 develops further the common rules for the internal market for natural gas and revoked the First Gas Directive. The Directive mandates regulated third party access, although access to LNG facilities and gas and LNG storage facilities may continue to be allowed on a negotiated basis.³ These different regimes share some common features, however.⁴ Under certain conditions major new infrastructures, including gas and LNG storage, can be exempted from the requirements concerning third party access.⁵ The TSO must be incorporated in a legally independent entity and must operate as a distinct commercial entity. Independent regulators must be appointed and these bodies must have certain minimum powers with regard to the approval of tariffs and terms of connection to and use of the pipeline networks and must also be able to dispose of complaints within a certain period. Finally as the Second Gas Directive foresees full market opening – to include first smaller industrial and commercial consumers (by July 2004) and then all domestic consumers (July 2007) the Directive provides that Member States may impose certain public service objectives on gas companies and also imposes an obligation on the Member States to ensure that all customers can easily switch supplier. A detailed Annex 3 to the Directive sets out the minimum consumer protection rights which must be adopted at national level. These include the right to receive adequate notice of contractual modifications, transparent information on prices and standard terms as well as the right to switch supplier free of charge. A prompt and inexpensive consumer complaint procedure must also be introduced.

Public service obligations have not been defined as such in the implementing Dutch legislation but they have been implemented materially in all respects. Suppliers are subject to a strict licensing procedure and the licence holder has the obligation to supply gas against reasonable tariffs and conditions to any household or small business so requesting. The regulator may set maximum tariffs if it has the opinion that the tariffs charged are unreasonable. Provisions which go into a dazzling extent of detail regarding unfair and misleading trading practices, fairness and transparency of contractual supply and transportation conditions as well as accessibility of transparent information on tariffs and conditions have been introduced by the I&I Act (2004).

2.4 Dutch position from an EU perspective

The Netherlands is one of the few producers of gas in the European Union; but it is also a significant importer of gas from Norway and Russia. The gas production and wholesale

supply market are dominated by Shell and Esso, together with the Dutch state, in Gasunie. The latter is an important source of revenue for the Dutch government.

The Dutch government has always exercised close control over its gas policy following the discovery of natural gas in 1959, as gas profits form an important source of income for infrastructural projects and other projects of national importance. Contrary to the situation for electricity, a comprehensive legal framework for the gas market was absent in the Netherlands before the enactment of the Gas Act in 2000. The corner stone of the gas market prior to the adoption of the new legislation was the so-called 'Gasgebouw' – a metaphor for a complex structure of public law regulation and private law agreements which was developed in the years following the discovery of the major Groningen gas field in 1959. In this Gasgebouw, the NAM obtained an exclusive concession to exploit the Groningen Field (NAM is a joint venture company owned 50-50 by ExxonMobil and Shell). The marketing and sale of gas was exclusively assigned to Gasunie, which is in turn jointly owned by the Dutch state and the NAM. Gasunie also owned the national high-pressure gas transmission system.

The importance of domestic gas supplies for the Netherlands has been reflected in price levels of gas over the years. For all categories of consumers – domestic as well as large industrial users - prices were traditionally kept low compared with the rest of Europe. Domestic consumers were usually supplied by publicly owned regional supply companies such as Delta, Essent and Nuon, which all have strong regional ties to local economies. In addition cheap gas tariffs have been an important tool in domestic industrial policy regarding in particular the horticultural sector and chemical producers.

In contrast to the electricity liberalisation process, the Netherlands have been slower to embrace full liberalisation of the gas market. The unique position of Gasunie and the traditional informal approach to the organisation of the national gas market through the Gasgebouw is usually considered to be a major explanation for the reticence of the government to embrace change initiated at European level. In fact in the negotiations leading up to the adoption of the First Directive, the only clear lobby supporting the European initiative was the major industrial user lobby. The government made substantial efforts to secure Gasunie's privileged market position during the negotiations on the First Directive.

Furthermore, the government attempted to safeguard its traditional approach to depletion policy in respect of its own gas resources. In essence this has involved ensuring that so-called small fields – that is all gas fields except the Groningen field – should be developed and exploited first, with the Groningen field performing a balancing function. Gasunie has been given the right of first refusal to buy gas from small field producers. Interestingly this

depletion policy is still maintained by the Dutch government, despite criticisms that it would not be a cost-effective approach (CPB, 2006). It would appear that security of supply objectives, as opposed to economic objectives are at this stage more important to Dutch policy makers.

The Gas Act of 2000, implementing the First Directive made extensive inroads into this status quo, even if Gasunie was allowed to maintain its pivotal role. This was essentially secured through lobbying efforts to ensure that the First Directive did not impact on the long-term contracts which Gasunie had concluded with upstream suppliers of gas as well as the network of such contracts that Gasunie had concluded with downstream distributors (see further Van Keulen, 2006).

Given that the First Directive had only a limited impact on the traditional 'Gasgebouw' and given that the major national policy objectives with regard to depletion policy could be continued, alongside moderate changes to the existing market structure, the adoption of the Gas Act did not provoke wide public discussion. It fitted in with the then governing coalition's policy of gradual liberalisation and eventual privatisation subject to extended regulation and enhanced competition law enforcement. The debates on the legislation were generally perceived as being of a technical nature which would impact a restricted number of actors.

The adoption of the Second Directive and its implementation through the I&I Act has led to more far-reaching changes in the structure of the Dutch market – albeit that the Gasunie still maintains a strong position and national depletion policy has not been amended. The 'escape clauses' incorporated into the First Directive were preserved so that the legality of long-term contracts could not be easily challenged – either upstream or downstream. Given that the Directive (and the subsequent implementing legislation) heralded greater consumer choice and price competition, the Dutch government appeared to consider that it had sufficient public support to take a favourable stance on the new European measures. In fact the only continuing opposition to the Directive came from France, which was reluctant to disband its public monopolies any further, and Germany, which for constitutional and political reasons, was not in favour of an independent regulator. The I&I Act in fact took liberalisation further than actually required under the Directive, and allowed all consumers freedom of choice of supplier as of 1st July 2004 (as opposed to July 2007 as foreseen by the Directive). Furthermore it ascribed far-reaching powers to the DTe – elevating the latter to the status of one of the strongest independent regulators in Europe.

2.5 Current developments

The Second Directive of 2003 introduced the concept of legal unbundling into the gas market – the TSO must be legally separate from the companies providing other functions such as gas production or distribution. This does not however imply what is known as ‘ownership unbundling’ – ie. that the network assets should be owned by a separate company. Nevertheless the Dutch government has followed a policy of ownership unbundling. In the first instance this was applied to the national electricity grid network – which was transferred to the State in 2002. Subsequently the national gas network belonging to Gasunie was separated into a new company, GTS, which was also transferred to the State in 2005. In the meantime however, as the shareholders in the regional electricity and gas supply companies are provincial and local authorities it has been necessary to adopt legislation to prevent these authorities privatising their supply and network assets. As part of the process for preparing for privatisation, the Minister of Economic Affairs has insisted on ownership unbundling of the network assets of the regional supply companies. Following unbundling it should be possible for the supply companies to be privatised in full and it is expected that it will be permissible for the regional and provincial authorities to sell up to 49% of the shares in the network companies.

Minister of Economic Affairs (Brinkhorst, D66), who initiated the policy on full ownership unbundling as means to secure fair competition, was defending this approach as an important response to growing industry concentration and to growing import dependence throughout Europe (Economic Affairs, 2006). The Dutch Senate (Eerste Kamer) is expected to approve of the legislation this fall, and the regional energy companies will be given two and a half year to split their supply and network activities. What makes the stand of the Minister more interesting is that the Dutch government intensively tried to secure its own policy regarding the depletion policy when the First Gas Directive was proposed. The far going liberalisation trend regarding unbundling leave the impression that this Minister is executing an ambitious political agenda while support for the policies is rather thin.

The major regional energy suppliers have opposed to unbundling and have used extensive media campaigns to win public support. They argue that unbundling will weaken their overall international position and make them easy (and cheaper) targets for takeovers by major foreign companies who are rapidly expanding into different national markets. This opinion is shared by some prominent Dutch insiders, who have actively tried to persuade the Dutch government to abandon unbundling, stating for instance that major companies will indeed be threatened by foreign take-overs (Mr. Verberg, former director of Gasunie, 2006) and that the unbundling issue is neglecting the fact that energy policy today is no longer a national issue but has become a geopolitical matter (Mr. Bolkestein, former Euro-commissioner for

the internal market, 2006). Unbundling has also been advised against by the AER (2004) and the CPB (2005). It is generally argued that the new system of regulatory supervision – and the enhanced powers of the Energy Regulatory Office (DTe) are sufficient to secure competition and to prevent illegal cross-subsidisation. The government recently set up an independent commission of three wise men to establish the costs of unbundling. The Minister has also promised that these costs will not be imposed on the consumer/user but will be absorbed by the companies themselves. It can be observed that in contrast to several European countries (Spain, Austria, France, Germany, Hungary and Belgium) there has been little support for the idea of creating a Dutch national champion. A recent amendment to the draft law on unbundling (Vendrik/Crone) has however required the Minister of Economic Affairs to pursue the objective of persuading the European Commission to incorporate ownership unbundling into future European legislation. Still there is reason to doubt the Minister's interest in the well being of Dutch companies. In addition one could speculate how possible foreign takeovers contribute to security of supply for the Dutch consumers.

In the meantime there are ongoing moves towards further mergers in the European gas sector. This process of consolidation also reflects a major concern of energy companies and several governments regarding security of supply. Given growing external dependency on gas imports from countries considered to be politically unstable, European Union leaders of major companies have become more sceptical about future security of supply and argue that only large-scale fully integrated companies can combat seller power (PricewaterhouseCoopers, 2006). It is expected that the 'battle for consolidation' will last for a few years to come before the energy market will stabilise. In the end, the energy market in the European Union might only consist of five or six major companies – few of whom are likely to be Dutch (i.e. with the exception of course of Anglo-Dutch Shell).

3 THE POLITICAL RECEPTION OF THE EU GAS DIRECTIVES

3.1 Main participants in the debate on EU Gas Directives

As mentioned, implementation in the Netherlands has been one step ahead of the Directives, particularly as the Second Directive only requires full liberalisation as of July 2007. Within the parliament there had been extensive debate about the pro's and cons of the liberalisation policy. In the end only the left-wing opposition parties GroenLinks and SP opposed the Gas Act, stating to fear the emergence of commercial monopolies. Furthermore an amendment of PvdA was accepted unanimously containing the possibility for an-depth evaluation by government in 2003 and additional option for partial market liberalisation. Table 1. briefly describes the positions of the different parties concerning the Gas Act of 2000.

Opinion on:	Gas Act 2000
CDA	In favour of the Gas Act under conditions, most important argument is compensation of Dutch horticulturists (Mr. Van den Akker).
VVD	Minister Jorritsma of the Liberal Party was the initiator the Gas Act, as most European member states had approved of accelerated liberalisation in Lisbon.
D'66	Supported the initiative of Minister Jorritsma since accelerated liberalisation was initiated at a European level (Mr. Van Walsum).
PvdA	The social-democrats were hesitant towards accelerated liberalisation of the gas market since they wanted guarantees to protect small-scale consumers and they feared the vagueness concerning accelerated liberalisation (Mrs. Witteveen-Hevinga).
GL & SP	The other left-wing parties opposed accelerated liberalisation, fearing the emergence of commercial monopolies and thus seeing the Gas Act as a threat for small-scale consumers.

Table 1: Different position of political parties in the Netherlands concerning the Gas Act (2000).

After this debate energy companies knew what they had to prepare for: they were obliged to split up their companies into gas suppliers and network administrators. In general however these companies strongly opposed the intended shift, stating that it had not been long since the monopoly of Gasunie became history and this caused the market to be unprepared in all facets for more competition. Interestingly at this stage of the policy process no significant consumer voice was present in the debate. Indeed consumer awareness of the implications of liberalisation was initiated in 2004, when extensive media campaigns were launched to prepare consumers for the liberalisation and the envisaged switching of suppliers. The I&I Act of 2004 devoted much more attention to consumer protection. Among other things this

law – initiated by Minister Brinkhorst (D’66) – guaranteed a term of notice for small-scale consumers of maximum 30 days, and provided more authority to the national Energy Regulator (DTe) and amended the Civil Law Code in order to protect consumers. In Table 2. one can find the different positions of the political parties involved in the debate on the I&I Act.

Opinion on:	Implementation and Intervention Act 2004
CDA	In favour of the I&I Act after acceptance of three amendments, concerning regulated access to electricity nets, gas nets and a transmission system operator (TSO) – also advised by the Energy Regulator (DTe) – despite rejection of amendment in order to prevent the Minister of Economic Affairs to gain power to approve of tariffs and regulations (Mr. Hessels).
VVD	The liberal party in the Senate indicated that the discussion should have taken place somewhat eight years earlier (Mr. De Krom).
D’66	Initiator of the I&I Act Minister Brinkhorst reinforced his opinion with the philosophy of ‘Strong market, strong government’ in which he wanted the market to function independently but in which the Minister of Economic Affairs would have to approve of the tariffs and regulations amongst involved parties (ECN, 2004).
PvdA	Voted in favour of the law after several amendments were accepted (Mr. Krone).
GL	Mrs. Karimi of left-wing GroenLinks did not oppose the I&I Act after amendments for stimulation of solar-energy and the obligation to label energy in the future were approved of.
SP & LPF	Were the only two opposition parties opposing the I&I Act. Both stated that security of supply and the mechanism of the market are not safeguarded in the current timeframe, leaving consumers to their destiny of rising prices and making companies easy targets for foreign take-overs (Mr. Irrgang and Mr. Van den Brink).

Table 2: Different positions of political parties in the Netherlands concerning the I&I Act (2004).

One could argue that gas market liberalisation was politicised between certain groups of consumers (in particular large consumers) and incumbent players in the market such as Gasunie, but not initially among all consumers, including small consumers who were supposed to benefit from the new measure. The attention paid to the interests of small consumers as well as the participation by this group is perhaps disappointing, but this could be explained by the technicality of the issue and the fact that gas cannot be branded.

3.2 Evaluation of the liberalisation process

Six years after implementation of the Gas Act, an attempt to evaluate the liberalisation of the gas market is possible. Several components have been selected for this evaluation, each of which is discussed separately.

3.2.1 Price developments

The objective of market liberalisation is that it should lead to cost efficiency and that these costs should be reflected in the gas prices. It ought to be mentioned that these costs are not only influenced by competition among suppliers, but that government intervention in the form of taxes and levies also play a part in this process. Competition may well lead to lower consumer prices, but shortages of supply in the long term may cause prices to rise again and can cause severe fluctuations. An evaluation of price developments in the gas market led to the conclusion that competition in the gas market is less developed than in the electricity market. The increase in gas prices for both households and large industrials is largely caused by the increasing price of oil, to which gas prices are usually linked (ECN, 2001). Increases in prices in the Netherlands however are among the sharpest in the European Union, with 11% increase in 2003 (Services of special interest, 2006). In addition the increase in prices is supported by data from Statistics Netherlands (CPB, 2006) which are expressed in figure 1. The average household uses about 2000m³. It would seem that liberalisation in the first years caused energy to be more expensive, in particular for smaller consumers, although rising oil prices and higher taxes exert influence on this development as well.

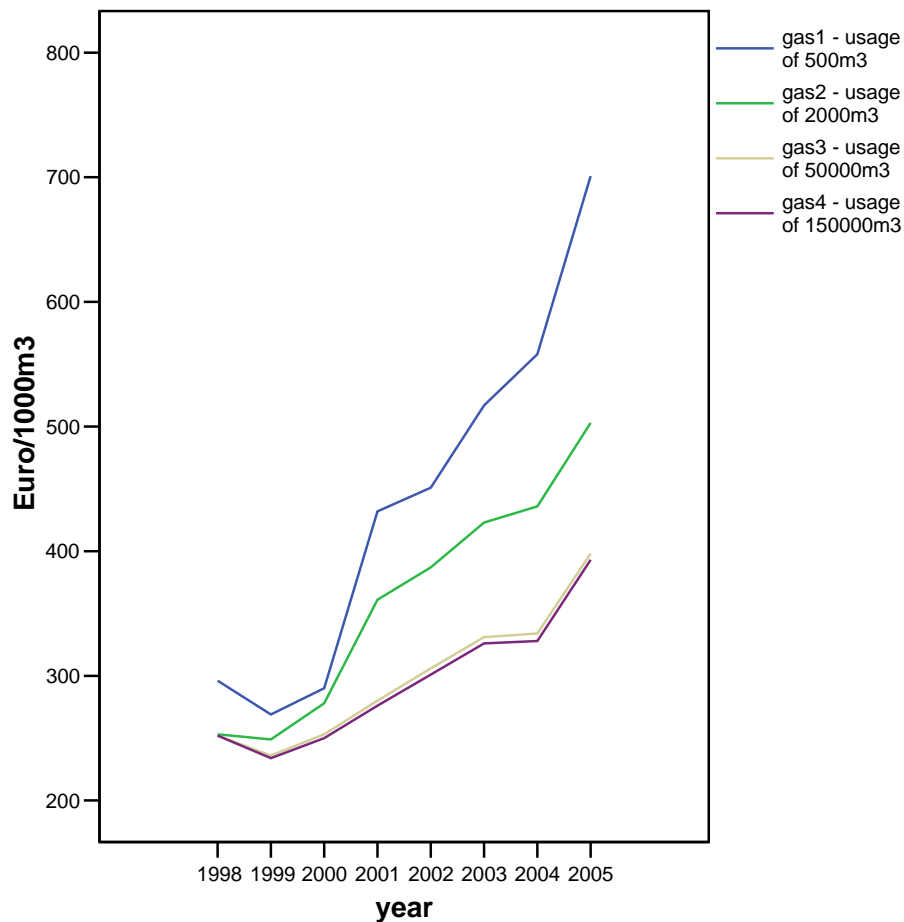


Figure 1: Price developments for different usage groups from 1998 – 2005.

To compare these figures with those from other European member states figure 2. on the next page can be of help. Although Dutch consumers in absolute terms are not paying the highest tariffs per GJ, the percentage increase since 1994 is the highest in the Netherlands with 58%, followed closely by France (53%) and Germany (47%). Despite the higher prices the majority of the Dutch consumers are not disillusioned about liberalisation of the gas market, as no lack of acceptance has been reported in terms of for instance consumer protest calls.

	1990	1995	2000	2001	2002	2003	2004
EU 25	10.31	11.05	11.62	12.93	13.11	13.37	10.93
EU 15	10.31	11.32	12.14	13.54	13.65	13.96	11.55
BE	12.77	15.07	15.87	18.49	17.25	17.66	17.48
CZ			5.53	6.85	8.67	8.03	8.76
DK			18.14	22.00	17.98	18.98	19.12
DE	12.16	14.19	14.06	17.16	17.35	17.53	17.82
EE						5.99	5.99
EL							
ES	12.84	12.77	13.50	16.30	15.42	15.40	14.81
FR	12.65	13.18	12.81	15.24	16.36	16.24	19.38
IE	14.30	16.83	16.20	16.20	16.19	16.33	17.82
IT	11.83	10.44	12.32	14.42	13.60	13.84	13.97
CY							
LV							4.43
LT							8.07
LU	11.00	10.75	11.30	13.37	12.32	12.61	12.28
HU		2.95	3.66	3.95	4.79	4.86	6.36
MT							
NL	7.94	9.99	10.39	8.57	9.45	12.71	12.53
AT			11.27	15.19	15.19	16.04	
PL			6.51	6.83	8.63	8.25	7.44
PT					16.66	16.93	17.21
SI		13.83	15.77	12.98			10.70
SK							8.86
FI							
SE			15.70	18.44	19.75	20.24	21.50
UK	8.03	8.91	10.03	9.56	10.07	9.85	10.07

Figure 2: Natural gas prices for households (all taxes included) prices in Euros per GJ (Eurostat)

3.2.2 Switching levels

Another crucial question is whether Dutch consumers responded to the possibilities offered by market liberalisation. One possible indicator here is the number of households that made a switch in gas supplier after the implementation of the I&I Act of 2004. A study carried out by the European Commission so far showed that 30% of the large industrial users switched and 2% of the small commercial users in the first two years after full liberalisation (European

Commission, 2005). One could argue these figures are slightly disappointing since one would expect high switching levels when public involvement would be high. On the other hand apparently this is what the Dutch government wanted and if lower prices are realised switching rates might grow in the nearby future.

According to the Dutch Competition Authority (DTe) there is a considerable amount of competing suppliers in the gas market, namely 16. DTe also reports low switching levels and attributes this to uncertainty with regard to administrative processing of the necessary data by suppliers. Another reason for Dutch consumers to avoid switching is the low price spread. This would be the main reason for Dutch consumers to consider switching but since differences are not considered worthwhile many consumers apparently would rather avoid the administrative burden. DTe reports another reason for some consumers to switch: the resentment as to the high salaries earned by senior managers of some major suppliers (DTe, 2005).

3.2.3 Short-term versus long-term perspective

The proponents and opponents of gas market liberalisation each have their arguments as to the implications and impact of change – or indeed the lack of it. Dutch government so far has argued that liberalisation in the end will serve the consumer by bringing down prices and offering choice. In addition more suppliers would enter the market, stimulating a downward pressure on prices and extending the selection of suppliers. Price fluctuations as witnessed in the past few years are mainly attributed to rising oil prices and the insecure future prospects of the entire European energy market.

Opponents of the liberalisation – notably the major suppliers in the Netherlands – argued the market was simply not ready for the transition from monopoly to competition. They envisage current fluctuations in prices partly as a result of rising oil prices and insecure future prospects, but in addition signal trends in the global energy market such as intensifying merger activity and the discussion on security of supply. If only five or fewer major suppliers control the EU market in the long run, this raises the question of whether this ongoing liberalisation will indeed result in competition and serve the consumers. In addition one could wonder whether in this scenario security of supply is fully dealt with.

3.3 Consequences of the Russian-Ukrainian incident in December 2005

The well-known incident caused a turbulent debate but in fact the event itself was not that special. Ukraine used to pay special tariffs for Russian gas being an ally of the country. Given the more western orientation since the Orange Revolution the Russian government felt that

these tariffs might as well be market oriented. Ukraine refused to agree with this and Russia closed the pipeline (Van den Heuvel, 2006).

What is special about this event is that it initiated a debate about security of supply of geopolitical proportions. It is no secret that several rapidly developing economies have put more pressure on the world's energy resources, or that in particular the European Union is highly dependent on the imports of both oil and gas. Exactly because these are no secrets the intense debate and visible trends are interesting. Within Europe one can witness more protective policies of national governments concerning their energy suppliers, resulting in national attempts to block mergers between, for instance German Eon and Spanish Endesa and Italian Enel and French Suez. Both the Spanish and the French governments have attempted to promote mergers between national incumbents in order to promote national champions. Recently the Commission has reprimanded the Spanish government for this behaviour. The French fusion between Gaz de France and Suez however will be approved of.

In the Netherlands shortly before the Russian – Ukrainian incident the AER published a report emphasising the need to secure energy supplies both through means of more developed external European Energy Policy and in addition advised the government to strengthen the Dutch position in the European debate on energy. Developments at the European energy policy level should not be made at the expense of neglecting bilateral policies. Assigning competences to the European level is necessary to realise a European Energy Policy but the Council recommends bilateral alternatives, in particular in the transition phase leading up to the adoption of a more co-ordinated European common external policy (AER, 2006).

How the Dutch position should be further secured must be based on two scenarios: full globalization and integration could take place, a scenario in which free trade would be a key concept, or energy resources will turn into a political-strategic tool leading to politicisation of energy (AER, 2006). The latter according to critics happened in the Russian – Ukrainian incident. The Council furthermore advises to consider military protection of international transport routes and to reformulate relations with important trading partners concerning energy resources, in particular Russia but also countries from the Middle East and Northern Africa. While the European Union and thus the Netherlands are becoming more dependent on these nations so-called 'giving and taking' in bilateral relations should become fully developed.

3.4 New challenges

We are now facing certain fundamental changes in our approach towards and treatment of energy resources. Security of supply has become the central objective of most national energy policies. What makes the situation more interesting is that most developed parts of the world (red. European Union and United States) are the most dependent on energy imports. This growing import dependence moved President George W. Bush of the United States to plead for energy independence in his latest inaugural speech. How this should be fulfilled remains rather unclear (De Jong & Slingerland, 2006). His country will need to find new technologies in order to reach this desired stage of independence.

Within the European Union the spectre of security of supply clarified something which might be of more importance: the lack of a common or co-ordinated European energy policy. As discussed earlier, many Member States fear that liberalisation will weaken their national energy companies and some governments already took measures to secure its national companies. This economic protectionism might be understandable, but it does not contribute to the further integration of the European market. In the Netherlands another expression of nationalism is depletion policy. Ironically, European studies show that most citizens are in favour of enhanced cooperation.

As shown above, in particular small consumers are exposed to the consequences of these challenges by paying higher prices for their energy. One response to these challenges could be the Green Paper presented by the European Commission in March 2006. Its introductory analysis clearly shows that the European member states' energy usage is mainly built on oil (37%) and natural gas (24%) and that demand are rising. In addition the bulk of these resources is imported, marking the dependence of Europe on Russia, Middle Eastern and Northern African countries. It is expected that gas import dependency rises from somewhat 50% nowadays to 84% in 2030 (Eurostat). In addition most imports will come from unstable regions in the world. First of all future trends will demand major investments in LNG-terminals and underground storage in the member states. Moreover pipelines need to be expanded and uniformed in order to improve the interconnectedness within Europe (a level of 10% was agreed in Barcelona in 1992 but might not be made). Management of the external dependence would benefit from a Joint External Energy Policy, which is addressed in the Green Paper as well. Finally the Green Paper calls for more emphasis on energy efficiency due to the combination of expected rise in energy demands and negative consequences in terms of for instance CO₂ emissions. The Ministry of Economic Affairs has expressed its broad support for the Commission's initiative albeit that it has stressed that future Community initiative should not lead to any further transfer of powers to the Community institutions (TK letter, March 2006). In particular the initiated establishment of a European

'watchdog' of energy markets has not received positive comments. In addition the strategic goal of EU Commissioner Piebalgs to formulate a European 'fuel-mix' was not encouraged. According to Dutch Minister Brinkhorst these differ too much among European member states and therefore this initiative is not relevant. Responses of national ministers do not make the work of the Commission in this dossier easier. On the one hand liberalisation needs to be instigated but on the other hand member states are reluctant to yield powers from their national domains.

4 COMMUNICATION REGARDING THE ISSUE

4.1 Prices, switching levels, choosing alternatives and the unbundling discussion

Until 2004 liberalisation of the gas market did not receive broad attention. It seemed the matter was primarily a political issue, inspired by European Gas Directives and ambitious Ministers of Economic Affairs. Furthermore obviously the major energy companies were involved in the debate – in particular the unbundling discussion – and as mentioned these opposed the intentions of government critically. Was there any consumer interference in the debate?

Once the gas market was liberalised most communication regarding the actual products and switching opportunities came from the existing energy companies and additionally some new ones entering the market. According to the Dutch Consumers Association the government created false expectations by informing the public about for instance lower prices. In their opinion the amounts of money that can be saved are only a fraction of the entire energy bill of an average household. It would for example be more relevant to discuss saving on the use of energy resources itself.

What seems to be an absolute plus point of the liberalisation of the gas market is that not only third parties (new suppliers) can access the market, but moreover that consumers are involved in the discussion. On the other hand it is unsatisfactory that the notion of consumer participation in this debate is restricted to protection against fraudulent practices, which gave the energy sector the dubious honour to end third in the annual ranking of most accused business domain (National Ombudsman, 2006). Consumers are not actively involved in the policy making process or even adequately informed in order to allow for this possibility. The debate has not been controversial like it was in France and Germany for example since it holds no ideological value to the Dutch. It seems politicians had a rather technical debate without sincere citizen consultation and because of this framing no consumer participation is to be expected. In the Netherlands the DTe is responsible for updating the public about achievements and service levels of the different suppliers in the market. To communicate results to consumers, this agency developed a score card marking the advantages and disadvantages of several companies which are published both on the website of the Competition Authority (NMa) and the website of the Ministry of Economic Affairs.

On a European level however the Dutch policy is rather progressive according to the Dutch Consumers Association. What is more worrisome than the liberalisation of the national markets and its various complications is the centralisation of the European gas market instead of the promised increase of competition.

Finally the unbundling discussion created much noise in press coverage. One of the reasons might be the fierce opposition of major energy companies against unbundling. The most important fear was that Dutch energy companies would become easy targets for major foreign companies. Despite the opposition Dutch government has pressed ahead with its plans to make the companies unbundle, and has given them two years to comply.

4.2 With regard to security issues (mainly result from Russian-Ukrainian incident)

The referred incident in December 2005 has often been identified as a turning point for the gravity of energy policy makers. Whether Russia used its gas supply as a political measure or not, ever since policy makers are even more occupied as before about securitising national gas supplies.

Earlier in 2005 the AER emphasised that security of supply deserved more attention. In some respects the gas market shows similarities with the oil market, where security of supply has been subject of study since the 1973 Oil Crisis. Given the liquidity of gas an entire comparison is not justified, however, there are several reasons to doubt whether market mechanisms will securitize EU supplies. Within this particular market there are only a limited number of players and the EU gas market is not a closed entity but should be seen in a global perspective (AER, 2005). Although the Russian-Ukrainian incident at the end of 2005 urged political leaders to emphasise the essence of security of supply, an apparent paradox can be witnessed as well. While at least some EU governments have been progressive in implementing both the First and the Second Gas Directive, nearly all governments have been reticent to transfer competences regarding energy policy to the European level, as was for instance initiated in the European Green Paper in March 2006. Despite the fact that the Dutch Minister of Economic Affairs has enthusiastically implemented both Gas Directives and even further going measures to liberalise the national gas market, he can be tattled on this same paradox as well.

In June 2006 some major gas consumers from the Dutch industries alarmed the Minister since Gasunie indicated that it could not provide these major consumers within the next years. The Minister rejected these alarms by stating that these consumers simply needed to find other suppliers for their gas. In addition he assured the media that Dutch consumers did not have to fear their gas resources (NRC, 2006).

5 ESCAPE ROUTES

5.1 Organising the gas supply – conserving own resources

As discussed above, the Dutch government has applied a depletion policy since the discovery of gas in 1959 to protect the national gas reserves and to guarantee the initial exploitation of the smaller reserves. In the first paragraph of this chapter the depletion policy is briefly explained, while a CPB study on the matter is discussed as well. Later on in the second paragraph some future prospects are mentioned.

5.1.1 The Dutch depletion policy

The main principle of the Dutch depletion policy is that all exploitable small gas reserves should be developed as long as this process does not damage the environment irretrievably. It is undesirable according to the new Mineral Deposits Act (2002) that exploitable gas reserves are left within the soil, since this is important for the economy, the gas supply and the security of supply. This policy was 're-formalised' by Minister Brinkhorst in 2005 when setting the maximum of 42,5 m³ per year for the next decade.

Proponents of the Dutch policy argue that it enlarges the production of gas from relatively small sections and it diminishes the dependence of gas imports. On the other hand one could argue that relatively expensive gas is now produced while accessible and cheaper reserves are kept for later. Furthermore an interventionist depletion policy does not seem compatible with a liberalised Dutch gas market. In this type of market government should only participate actively when the market mechanism fails.

Analysts of the Netherlands Bureau for Economic Policy Analysis have argued that there are indeed signs that market mechanisms are failing in the gas market. They signal a lack of competition on the international gas market. Moreover they indicate that consumers do not realise their influence on import dependence by means of their gas usage, in other words their influence on the nation's dependence on other countries (CPB, 2006). Another negative sign is that there are indications that investments in for instance gas storage are not occurring, possibly since companies fear they might not regain their investments when government might decide to perform stricter regulations on the gas market.

5.1.2 Future prospects

The net effects of the sales guarantee for gas from small-fields policy are positive for now, but this might change when the international market develops (CPB, 2006). Already alarming sounds from major industrial consumers have been heard. They had troubles getting new contracts with Gasunie (NRC, 7th June 2006). Minister Brinkhorst responded there will be

no gas shortages in the nearby future and these major consumers simply should look for other suppliers as part of the liberalisation of the market. Current policies are possibly not efficient in terms of production and or consumption. According to the analysis of the CPB gains such as a decrease of international dependence could for instance be achieved by enhancing gas use savings. In addition this behaviour does not enlarge production figures, but solely motivates other European member states to import more gas or use less of it.

Alternatives to the current policy would perhaps be to step up production figures such as for instance the United Kingdom has opted. Furthermore the Dutch government could actively seek to improve competition on the European market, from which producers of larger Dutch gas reserves would benefit since production would rise, although smaller reserves could possibly not benefit since gas prices would decrease. It would be worth debating why the depletion policy should be maintained when improvement of the gas market mechanism could destabilize its foundation and moreover given that the Netherlands will be a net exporter of gas for only twenty-five years to come (Minister of Economic Affairs Brinkhorst, 2006).

5.2 Organising the industry – ownership / reciprocity issues

The accelerated liberalisation of the Dutch gas market caused a storm of critique, in particular from the gas branch itself. Their main argument was that the gas sector was not ready for full liberalisation, since it had been state-controlled for so long, and it would weaken parties thus making them vulnerable for foreign take-overs. The prominent if not privileged position of Gasunie did not make for a sound basis to initiate market mechanisms.

In terms of reciprocity so far government has made large demands of the gas sector: accelerated liberalisation was forced through, despite serious objections from different parties. Minister Brinkhorst went as far as to couple his political career to the success of this liberalisation project. The industry would have been happier if full liberalisation had been on phased in during 2007, as required by the Second Gas Directive.

6 COUNTERFACTUAL

6.1 France

Following its late implementation of the Gas Directive of 1998 France remains hesitant to implement the requirements of the Second Directive of 2003. Minimal reforms have been adopted. Extreme caution is applied, for example the 'high-speed-merger' between Suez and Gaz de France before Italian Enel could interfere in the French market.

One serious disadvantage of the French approach is that it causes differences within the European Union to grow instead of decline (Finon, 2001). In addition the French case illustrated that the historical dominant position of one player instigates allegations of reputed abuse of power. As competition becomes livelier and major players such as Gaz de France / Suez start acquiring foreign companies, this situation of domestic dominance and state protection provokes controversy within and among member states on rules to be applied to create the right industrial structures.

Policy options for the French government have rested on two considerations. First, they could and seemingly wanted to maintain for as long as possible the status of public service with a capacity for government to interfere with energy policy whenever thought necessary. On the other hand the Directives required the French government to open up the gas market within a precise timetable. The government took a conservative approach to implementation; for instance local distributors had very little freedom to choose suppliers (Finon, 2001).

French policy has ensured that incumbent players on the market enjoy an advantageous position and significant market share, while new players must invest on a very large scale in order to compete. Furthermore incumbent players possess a commercial network with extensive client knowledge and have ensured customer loyalty through privileged contracts with major consumers before liberalisation was phased in. Gaz de France has been one of the targets of a dawn raid by the European Commission in May 2006; it still holds a market share of 82% and is suspected of not fully opening their pipeline network to potential competitors (Financial Times, 2006).

One important major difference between the French and the Dutch dossier is the nationalistic element involved. Whereas the French government has proved keen on maintaining a national giant by arranging the 'lightning-fusion' between Gaz de France and Suez, the Dutch government has brushed aside arguments made by Dutch national players that a Dutch national giant is important to guarantee security of supply. To what extent this issue in France was politicised remains unclear and debatable.

6.2 United Kingdom

Contrasting the French conservative approach as described before, the British government has been one of the most energetic participants in the European energy debate. As it set out strategic long-term goals with regard to future energy tasks in the Energy White Paper, one of the main goals to reach the formulated challenges is “to promote competitive markets in the UK and beyond...” (2004).

According to the Office of Gas and Electricity Markets (OFGEM) both wholesale and retail markets for gas are now fully competitive. This is in line with the government’s Energy Act (2004) which policy is to promote and improve the operation of competitive markets. This act was an important step in the liberalisation of markets, as it for instance created a single wholesale electricity market, called the British Electricity Trading and Transmission Arrangements (BETTA). Furthermore this act expresses that competition delivers significant benefits to energy customers and that those benefits are enhanced by protecting the interest of customers. In order to safeguard this process independent regulatory and consumer representation have been installed (respectively OFGEM and Energywatch).

Interestingly despite becoming a net importer of gas since 2004 the British have adopted an active strategy to deal with these matters. This is expressed both by the relatively fast liberalisation of domestic wholesale and retail markets and the British role in the European energy debate. Another example is provided by the so-called Gas Quality Exercise, which was initiated when Britain became a net importer of gas. Underlying this exercise is the assumption that imported gas may not always be of sufficient quality and therefore government must monitor the imported supply (Department of Trade and Industry, DTI, 2006). This example shows that British government is assertive to recognise the future possible dilemmas facing the country (and in addition the European Union) and tries to deal with matters proactively.

To underline the British ambition in the energy debate, in February 2006, the government formulated a European approach to energy policy. This paper set out the British vision on reliable, affordable and sustainable energy for Europe. It followed the decision made one year earlier by the Heads of State of the European Union that challenges should be dealt with jointly. This decision was initiated under British Presidency of the European Union at Hampton Court (2005).

Regarding security of supply the British have been crystal: security of supply is maintained best by promoting effective competition in wholesale and retail energy markets and by

network monopolies having the right incentives to invest (OFGEM, 2005). In order to cope with future dependence of other countries the United Kingdom has made clear which measures should be taken and communicates these through among others OFGEM. The most important investments the British government has initiated are in LNG import terminals, extension of interconnector pipelines from Belgium and the Netherlands and major investments in gas storage facilities. The British are also aiming at establishing so-called diversity of supply, with pipelines and LNG terminals covering all continents of the world.

Although the promotion of competition among European member states has been infectious, some conditions for successful competition can not be controlled. As other European nations are reluctant to implement ongoing measures of liberalisation, the British liberalised market has been punished for its dependence, so it seemed last winter, when gas prices rose enormously (DTI, 2006). Following complaints of the British government the European Commission started investigating these misapprehensions and concluded that serious problems such as high market concentration, vertical integration being a barrier to new entrants, and lack of transparency cause malfunctioning of the European market. These problems are said to lead to higher costs for British consumers.

7 CONCLUSIONS

imbedding / Legitimation

One way to approach this question may be to ask whether the process of imbedding has created a sufficiently robust structure to legitimate the policy of market liberalisation (structural legitimacy) so that future developments can also be successfully imbedded without damaging public acceptance levels. Another approach would be to examine whether the process of imbedding has acted as a substantive filter (substantive legitimacy) so that sufficient guarantees have been incorporated to allow certain national interests to prevail over integration goals.

In this respect we should also question the extent of the transformation in the content of EU policy which has been achieved by both Directives. As we have indicated policy making with regard to the gas market still contains many of the old elements of the 'international law / diplomatic' model – external relations and gas politics still remain primarily the reserve of the Member States and of the traditional elites. Furthermore, although one of the last horizons, the dossier still forms part of the classic economic integration area – it does not involve any substantial expansion of new competences for the EU. Transformation may however be an issue for the future.

The French and the British counterfactual provided interesting cases for comparison but did not provide answers whether the Dutch government actually imbedded the issue of gas market liberalisation faulty. One important difference is that the French aim convincingly at creating a national champion, whereas in the Netherlands we witnessed a lack of national involvement and the presence of relatively strong regional ties between energy companies and their backing. We conclude that the dossier has kept its technical nature throughout the process of implementing European Union legislation. Whether this has been done on purpose remains debatable (citizens can in general easily be persuaded by the promise of lower prices), but it certainly speeded up the implementation process. Referring to one of the questions raised in the introduction, it is rather difficult to assess whether this dossier contains a problem of legitimacy. It could well be that some form of illusory public acceptance exists. In that case public participation should not be expected before people are hit where it hurts: in the Netherlands this Achilles heel in general is the wallet.

Politicisation

We have shown that the issue of gas market liberalisation has been highly politicised in the sense that both Gas Directives were subject to extensive negotiation prior to their adoption at EU level and furthermore these Directives have been the subject of major parliamentary

activity and debate during the passage of the legislation leading to their adoption into national law. The legislation implementing the Second Directive has enjoyed extensive press coverage.

Hence political conflicts around the issues were highlighted and opposing positions were taken – albeit not around the central issues of to liberalise or not to liberalise the gas market – but rather around the related issues of timing and scope. In addition political conflicts have emerged around the ownership unbundling issue – but this is not directly attributed to EU law – it is a national or Ministerial response to his perception of how the Netherlands should secure its interests in the EU internal gas market. In this sense the Dutch gas market case provides an interesting case of political leadership. While all major energy companies and in addition authoritative relevant institutions questioned the need of liberalisation beyond the scope of European legislation, the Minister of Economic Affairs carried through his ambitious agenda, possibly putting the future Dutch security of supply on the line.

Social embedding

We have to stress here that the Gas Directives and their national implementation have led to more rights for consumers and to the promise of lower prices and more choice. Information on how to exercise those rights has been quite widely disseminated both by the Ministry of Economic Affairs and in particular by the energy companies themselves. Consumer organisations have come later to the scene. The regulator (DTe) also plays an important role here. It may well be that framing or communicating the basic objectives of EU policy – as well as national policy did not raise serious ‘framing problems’ – it is quite easy to sell the idea of lower prices!

Insecurity/Uncertainty

The primary source of uncertainty/insecurity in this dossier paper is the future: where will the gas for national consumption come from in the future? Can the Dutch government retain sufficient control over its depletion policy or would it be advisable to leave this policy and take a progressive stand in the debate towards a European energy policy, for instance with the British government? How should the Dutch government react to the challenge – unilaterally or in co-ordination with the EU – or a combination of the two? We could argue here that uncertainty or insecurity arises because of the lack of control on external events (e.g. Russia, Iran) which have little to do with the EU as such however they do have a de-politicising effect and thus the eventual response will be conditioned by EU policy. The reality may well be that it is better for the Netherlands to co-ordinate at EU level than to try to counter other stronger Member States (most notably Germany) on a bilateral level. These are classic dilemmas and classic responses – use the EU to secure essentially national interests.

Finally, there is uncertainty and or insecurity about the most appropriate response at the EU as well as the national level.

From this perspective we have to return to the remarks made under the heading 'imbedding/legitimation' – the key question is whether or not any further policy transformation at the EU level – which could lead to a loss of sovereignty of security of supply issues – could be sufficiently legitimated in the existing structural or procedural environment at national level? How robust is that environment?

We do not think we have to provide an answer to this question – but we think the question should be raised as part of an ongoing reflexive analysis of the imbedding/legitimation process – in other words it is open-ended – not because it is an incomplete process, but because of the very nature of the issues involved.

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NOTES

¹ See Report from the Commission to the Council, SEC.1996/496 final. This Report recommended the consolidation of the three Treaties or in the alternative, the adoption of a new chapter on energy to be inserted into the EC Treaty to spell out the energy policy objectives of the Community and provide for relevant instruments and legal bases. The need for a specific legal basis for re-iterated in the Communication from the Commission: An Overall View of Energy Policy and actions Com (1997) 167 final.

² Article III- 131 is the provision dealing with the rights of Member States to deal with internal disturbances.

³ Article 19 of the Second Directive retained the possibility for Member States to choose either a regulated or negotiated regime in relation to arrangements for gas and LNG storage.

⁴ Under both regimes storage operators are not allowed to discriminate between parties (Article 7). Under both regimes storage operators are not allowed to refuse access to facilities, unless on the basis of lack of capacity. Operators are solely allowed to refuse access when this would harm the public-service obligations or when it would cause substantial economic and financial difficulties (Article 17). Under the negotiated regime parties must be able to negotiate access to storage facilities. In addition operators are required to publish their main commercial conditions for the use of the facility system (Article 15). Under the regulated system parties must be given the right to access to the storage facility on the basis of published tariffs and/or other terms and obligations for the use of the facility (Article 16).

⁵ The relevant conditions for exemption are:

- The investment must ensure competition and security of supply.
- The investment is of such a high financial and economic risk that it would not take place without the exemption.
- The infrastructure may not be linked at least in legal terms to the system operator.
- Charges are levied on users of that infrastructure.
- The exemption is not damaging to competition or the internal gas market.